A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

Coram : **Hon'ble Shri Jagdish Bhalla, Ag.C.J. and**
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.85 of 2007

Royal Sundaram Alliance Insurance Company Limited
versus
Jhool Bai and others

and

Miscellaneous Appeal (C.) No.14 of 2007

Jhool Bai and others
versus
Shiv Kumar and others

ORDER FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge

HON'BLE THE ACTING CHIEF JUSTICE :

Sd/-
Ag. Chief Justice

24 -08-2007

Post for -08-2007

JUDGE
-08-2007

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

Coram : **Hon'ble Shri Jagdish Bhalla, Ag.C.J. and**
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.85 of 2007

Appellant
N.A.No.3

Royal Sundaram Alliance Insurance Company Limited, New Bus Stand, Pandri, Raipur (C.G.)

versus

Respondents
Claimants

1. Jhool Bai, W/o Late Dhan Sai, Aged about 45 years,
2. Ramavtar Sahu, S/o Late Dhansai, Aged about 28 years,
3. Rajkumar Sahu, S/o Late Dhansai, Aged about 26 years,

All R/o Village Torwa, P.S. Torwa, Tahsil & Distt. Bilaspur (C.G.)

4. Shiv Kumar, S/o Chiraiya Bajara, aged about 21 years, R/o Domuhani Dheka, P.S. Torwa, Tahsil & Distt. Bilaspur (C.G.) **(Driver)**
5. Smt. Khorbahrin Chandrakar, W/o Shri Rajkumar Chandrakar, aged about 37 years, R/o Village Kuwa, P.S. Pipariya, Tahsil & Distt. Kawardha (C.G.) **(Owner)**

Memorandum of Appeal under Section 173 of the Motor Vehicles Act, 1988

Miscellaneous Appeal (C.) No.14 of 2007

Appellants
Claimants

1. Jhool Bai, Wd/o Late Dhansai Sahu, aged about 45 years,
2. Ramavtar Sahu, aged 28 years, S/o late Dhan Sai Sahu,
3. Rajkumar Sahu, aged 26 years, S/o late Dhan Sai Sahu,

All residents of Torwa, P.S. Torwa, Tahsil and District Bilaspur (C.G.)

versus

(37)

Respondents

1. Shiv Kumar, S/o Chiraiya Banjare, aged about 21 years, resident of Domuhani Dheka, P.S. Torwa, Tahsil and District Raipur (C.G.)
2. Smt. Khorbaharin Chandrakar, aged about 37 years, Rajkumar Chandrakar, resident of village Kuwa, P.S. Pipariya, Tahsil and District Kawardha (C.G.)
3. Royal Sunderam Alliance Insurance Company Limited, resident of near U.T.I. Bank, New Bus Stand Pandari, Raipur, District Raipur (C.G.)

Miscellaneous Appeal u/s 173 of the Motor Vehicles Act, 1988

Present : Shri Sachin Singh Rajput, counsel for the appellant in M.A.(C.)No.85/2007 and for respondent No.3 in M.A.(C.)No.14/2007.
Shri Prafull Bharat, counsel for respondent No.5 in M.A.(C.)No.85/2007.
Shri Gautam Khetrapal, counsel for the appellants in M.A.(C.)No.14/2007.
None appears for other respondents.

ORDER.

(Passed on 24th August, 2007)

The following order of the Court was passed by **Dilip Raosaheb Deshmukh, J.** :

Being aggrieved by the award dated 09-11-2006 passed by the IXth Additional Motor Accidents Claims Tribunal (F.T.C.), Bilaspur (hereinafter referred to as 'the MACT') in Claim Case No.5/2006 granting compensation of Rs.9,31,196/- for the death of Dhansai, a Gateman in the Railways due to vehicular accident with a tractor trailer, the insurer has filed Miscellaneous Appeal (C.) No.85/2007 and the claimants have filed Miscellaneous Appeal (C.) No.14/2007, which are being disposed of by this common order.

2. During the course of arguments, the following facts were not disputed by learned counsel for the appellants and the owner in both the appeals :

(A) That Dhansai was working as a Gateman in the South Eastern Railway at Bilaspur.

(B) That tractor and trailer No.CG 07 D 4349 and 4350 (hereinafter referred to as 'the tractor trailer') were owned by respondent No.5, Smt. Khorbaharin (hereinafter referred to as 'the owner') insured by the appellant (hereinafter referred to as 'the insurer') on the date of accident, i.e., 31-12-2005 for agricultural and forestry purposes and driven by respondent No.4, Shiv Kumar (hereinafter referred to as 'the driver').

(C) That Dhansai died an accidental death on 31-12-2005 while he was riding a cycle due to collision with the above mentioned tractor trailer .

(D) That the driver possessed a valid driving licence on the date of accident for driving light motor vehicles.

(E) That the accident had occurred near Murrabhatta, Hemunagar Crossing on main road of Torwa, Bilaspur.

(F) That at the time of accident, the trailer was loaded with bricks.

(G) That the appellant/claimant Jhool Bai is the widow and Ramavtar and Rajkumar are the sons of the deceased Dhansai.

(H) That right to contest the claim on any other grounds that were available to the owner and the driver of the vehicle was granted by the MACT to the appellant/insurer vide order dated 03-08-2006.

(I) That no evidence was led by the owner and the driver of the tractor trailer before the MACT.

3. In their application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), the appellants/claimants had pleaded that death of Dhansai was as a result of rash and negligent driving of the tractor trailer by the driver. Dhansai was earning gross salary of Rs.10,417/- per month and also owned 8 acres of agricultural land having annual agricultural income of Rs.1 Lakh. The appellants/claimants claimed compensation of Rs.28,00,048/-.

4. The owner and the driver of the tractor trailer filed a joint written statement and specifically pleaded that on the date of accident the tractor was carrying bricks in the trailer for being taken to the site of the under construction pump-house of the son-in-law of the owner and also for purposes of construction of drains in the agricultural field. On way, a leakage occurred in the diesel pump and, therefore, the driver was taking the tractor trailer to a workshop situated at Link Road, Bilaspur for getting the pressure pump repaired. The tractor trailer was driven at a slow speed and the deceased stumbled on the trailer after the tractor had overtaken him and died due to his own negligence. Since the tractor trailer was insured, the liability to pay compensation was solely on the appellant/insurer.

(42)

5. The appellant/insurer in its written statement denied the pleadings in claim petition in toto and pleaded that the deceased Dhansai was responsible for the accident. Besides, the tractor trailer was not being used for purposes of agriculture, which was a breach of the policy conditions, therefore, the insurance company was not liable to pay any compensation. It was also pleaded that the driver of the tractor trailer did not possess a valid driving licence at the time of accident. On these premises, it prayed that it was not liable to pay any compensation.

6. The MACT recorded a finding that the accidental death of Dhansai was attributable to the negligence of the driver of the tractor trailer, who possessed a valid licence to drive the tractor which falls in the category of light motor vehicles. It further held that the insurance company had failed to prove that the tractor trailer was being used in contravention of the policy conditions or for a purpose different than for which it was insured. The MACT assessed the loss of dependency on the basis of a salary certificate showing gross salary of Dhansai at Rs.10,417/-. After deducting 1/3rd towards the personal expenses of the deceased, taking the age of the deceased at 50 years and applying a multiplier of 11, it awarded compensation of Rs.9,31,196/- to the appellants/claimants.

7. Shri Sachin Singh Rajput, learned counsel appearing on behalf of the appellant/insurer made a three-fold submission. Firstly, he contended that the tractor trailer being used for carrying bricks at the time of accident was a transport vehicle and, therefore, under Section

(43)

10(2) of the Act, it was necessary for the driver to possess a licence showing entitlement to drive a transport vehicle. It was next contended that the owner and the driver of the tractor trailer had not led any evidence to show that at the time of accident, the tractor trailer was being used for agricultural purposes. Placing reliance on ***Natwar Parikh & Co. Ltd.*** **vs.** ***State of Karnataka and others*****, 2006 ACJ 1**, it was contended that the Apex Court had held that the tractor trailer falls under the definition of goods carriage under Section 2(14) of the Act and consequently falls under the definition of transport vehicle under Section 2(47) of the Act. Reliance was also placed on a decision rendered by the Apex Court in ***National Insurance Co. Ltd.*** **vs.** ***Kusum Rai and others,*** **2006 ACJ 1336** while contending in the alternative that since the driver did not possess a valid driving licence, the appellant/insurer may be given the right to recover compensation deposited by it from the owner of the vehicle. Placing reliance on a decision rendered by the Apex Court in ***Asha and others*** **vs.** ***United India Insurance Co. Ltd. and another,*** **2004 ACJ 448**, it was contended that compensation awarded by the MACT is very much on the higher side as it ought to have assessed loss of dependency on the basis of the net salary, which the deceased was being paid in cash every month. It was also contended that the multiplier 11 applied by the MACT was not correct since the record clearly showed that the deceased was about 58 years of age for which multiplier 8 should have been applied. Besides, the admission of the claimant/appellant Jhool Bai that her eldest daughter was aged 36 years on the date of accident would clearly go to show that the deceased was aged not less than 58 years at the time of accident.

(44)

8. Shri Prafull Bharat, learned counsel appearing on behalf of the owner placed reliance on a decision rendered by a Division Bench of the High Court of Madhya Pradesh in ***Narendra Singh and another*** **vs.** ***Govind and another***, **2006 ACJ 2656** in support of his contention that transportation of bricks to the agricultural field for the purpose of construction of a pump-house or drains was rightly construed as use of the tractor trailer for agricultural purpose at the time of accident and, therefore, the appellant/insurer could not escape liability for payment of compensation. It was further contended that the tractor being a light motor vehicle under the Act, the mere fact that a trailer was attached would not convert it into a transport vehicle. Reliance was placed on ***Nagashetty*** **vs.** ***United India Insurance Co. Ltd.***, **2001 (II) MPWN 104 (Supreme Court)** wherein it was held that merely because a trailer was attached to the tractor, the driver, who possessed a valid driving licence to drive light motor vehicles, could not become disabled to drive such vehicle.

9. Shri Gautam Khetrapal, learned counsel appearing on behalf of the appellants/claimants contended that since the MACT has taken the age of the deceased at 50 to 55 years, it ought to have applied the multiplier of 13 as per the Second Schedule of the Act and, therefore, the compensation awarded by the MACT requires to be suitably enhanced.

10. Having heard the rival contentions, we have perused the record.

11. We shall first take-up the issue of quantum. The MACT has taken the gross monthly income of the deceased Dhansai for

(45)

consideration of loss of dependency, which, in our opinion, is not the correct approach. In ***Asha and others*** **vs.** ***United India Insurance Co. Ltd. and another*** (supra), it was held by the Apex Court as under :

> "8. ..... The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependants would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding."

12. In this case, the salary certificate of the deceased Dhansai, Ex.P-6 clearly shows that he was drawing a net cash salary of Rs.7,604/- every month. Placing reliance on ***Asha and others*** **vs.** ***United India Insurance Co. Ltd. and another*** (supra), we, take monthly income of the deceased for the purpose of assessment of loss of dependency at Rs.7,600/- and deduct a sum of Rs.2,500/- towards personal expenses of the deceased, i.e., 1/3rd. Yearly loss of dependency comes to Rs.5,100/- x 12 = Rs.61,200/-. The MACT has taken the age of the deceased as between the age group of 50 to 55 on the date of accident and applied the multiplier of 11. However, the post mortem report of the deceased, Ex.P-3, the inquest, Ex.P-2 and the F.I.R., Ex.P-1 show the age of the deceased Dhansai at 58 years on the date of accident. The MACT thus erred in determining the age of the deceased at 50 years and applying multiplier of 11. We take the age of the deceased on the date of accident at 58 years and apply the multiplier 8 as mentioned in the Second Schedule and assess loss of dependency at Rs.4,89,600/-, i.e., Rs.61,200/- multiplied by 8. To this,

we add a sum of Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,500/- each to the claimants No.2 and 3 for loss of love and affection and award compensation as under :

(1)	Loss of Dependency	=	4,89,600=00
(2)	Funeral Expenses	=	2,000=00
(3)	Loss of Consortium	=	5,000=00
(4)	Loss of Estate	=	2,500=00
(5)	Loss of Love and Affection	=	5,000=00
	Total	=	**5,04,100=00**

In this manner, just and reasonable compensation payable for the death of Dhansai is determined at Rs.5,04,100/-.

13. The contentious issue raised by learned counsel for the insurance company that the driver of the tractor trailer did not possess a valid driving licence for driving a tractor at the time of accident is liable to rejection. It is not in dispute that the driver of the tractor possessed a valid driving licence on the date of accident for driving light motor vehicles. The main issue in the case of ***Natwar Parikh & Co. Ltd.*** **vs.** ***State of Karnataka and others*** (supra) was whether the taxation authority was justified in taxing the tractor trailer as a separate and distinct vehicle, different from a tractor and denying exemption sought by the appellant under Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957. In this manner, the case law cited is distinguishable since the question involved therein was altogether in a different context.

(97)

14. A "light motor vehicle" is defined under Section 2(21) of the Act as under :

> "**Sec. 2(21)** : "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor (emphasis supplied by us) or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;"

15. A "tractor" is defined under Section 2(44) of the Act as under :

> "**Sec. 2(44)** : "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;"

16. A "trailer" is defined under Section 2(46) of the Act as under :

> "**Sec. 2(46)** : "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;"

17. Thus the definition of "light motor vehicle" includes a "transport vehicle". A "tractor" is also included in the definition of "light motor vehicle".

18. In ***Nagashetty*** **vs.** ***United India Insurance Co. Ltd.*** (supra), in a similar situation, the Apex Court has held as under :

> "We are unable to accept the submissions of Mr. S.C.Sharda. It is an admitted fact that the driver

(98)

had a valid and effective licence to drive a tractor. Undoubtedly under section 10 a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C.Sharda is to be accepted then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle."

19. Placing reliance on the judgment of the Apex Court in ***Nagashetty*** **vs.** ***United India Insurance Co. Ltd.*** (supra), we hold that since the driver of the tractor had a valid and effective driving licence to drive the tractor, he would not become disabled to drive it merely because a trailer was attached to the tractor.

20. We shall now take-up the contentious issue relating to breach of policy by the owner. In the facts and circumstances of this case, this issue is squarely between the owner and the insurer. The owner had filed written statement and in paragraph 3 thereof had stated as under :-

> "3. ..... कथित घटना दिनांक को संबंधित ट्रेक्टर में जो ग्राम दरीघाट में अनावेदिका क. 2 के दमाद के कृषि फार्म में निर्माणाधीन पम्प हाऊस तथा खेत में बनने वाले नालीयों के निर्माण में लगने वाले इंटा लाद कर ले जा रहा था । ट्रेक्टर के डिजल पम्प में अचानक लिकेज हो जाने से प्रेसर पंप को सुधरवाने के लिए वह लिंक रोड बिलासपुर स्थित वर्कशाप ट्रेक्टर ट्राली सहित अनावेदक क. 1 आ रहा था ....."

21. In the facts and circumstances of this case, the burden of proving the above pleadings was on the owner. A perusal of the pleadings of the owner quoted above shows that at the time of the accident, the tractor was heading towards a work-shop in Link Road, Bilaspur for repairs. By no stretch of imagination this could be construed as use of the tractor trailer for agriculture purpose. Although it was pleaded that the tractor trailer was carrying bricks for being carried to the agricultural farm of the son-in-law of the owner for being used in an under-construction pump-house and also for construction of drains in the agricultural field, no evidence was led to prove the said fact. The son-in-law of the owner did not enter the witness box. No documentary evidence was adduced to show that the son-in-law of the owner owns an agricultural farm-house or that the owner has

(50)

agricultural fields where construction of drains was to be under taken. The owner also did not enter the witness-box. In this manner, the best evidence, which was available to the owner, was withheld. In the absence of such material evidence, the admitted fact that the tractor was heading towards Darrighat with a brick-load in the trailer and was involved in an accident in an urban area of Bilaspur, clearly leads to an irresistible inference that the tractor was being used for a purpose other than agricultural purpose. No evidence has been led by the owner to prove that due to a leakage occurring in the diesel pump, the driver was bringing the tractor trailer to Link Road, Bilaspur. In the peculiar facts and circumstances of the case and the pleadings of the owner, an inference can safely be drawn that at the time of the accident, the tractor trailer was in an urban area of Bilaspur, i.e., Link Road, Bilaspur and was being used for a purpose other than agriculture, i.e., for transporting a load of bricks to an urban area. Thus, it is established that there has been a breach of a specified condition of the policy, i.e., use only for agricultural purpose. The case of ***Narendra Singh and another*** **vs.** ***Govind and another*** (supra) cited by learned counsel for the owner is clearly distinguishable and does not help the owner in any manner. In that case, the owner had entered the witness-box and his version was equally supported by the driver of the tractor trailer that the land was taken on crop-sharing by the owner and no evidence to the contrary was adduced by the insurer. In the peculiar facts and circumstances of this case, it was for the owner to establish that the tractor trailer was being used for carrying bricks to the agricultural farm-house of the son-in-law of the owner for an under-construction farm-house and also for construction of drains. Neither the owner nor the driver entered the witness-box and not even an iota of evidence was

(51)

adduced by them. Due to withholding of material available evidence, the plea of the owner, if taken on its face value, clearly goes to show that at the time of accident the tractor trailer carrying brick-load was heading towards a work-shop in Bilaspur for repairs and not for agricultural purpose. We accordingly hold that due to a fundamental breach of the policy condition relating to the use of the tractor only for agricultural purposes, liability for payment of compensation can not be fastened on the insurance company and rests solely on the owner of the tractor trailer.

22. In the result, Miscellaneous Appeal (C.) No.85 of 2007 filed by the insurance company is allowed. Compensation awarded by the MACT is modified and instead compensation of Rs.5,04,100/- is awarded against the owner of the vehicle, i.e., Smt. Khorbaharin Chandrakar. The appellant/insurer is exonerated from the liability to pay compensation. The appellant/insurer may recover the amount of compensation already deposited by the insurance company with the MACT from the owner by initiating separate execution proceedings. Miscellaneous Appeal (C.) No.14 of 2007 filed by the claimants for enhancement of compensation is dismissed. The owner Smt. Khorbaharin Chandrakar shall deposit the remaining compensation in the MACT within a period of three months from today, failing which, she would also be liable to pay interest at the rate of 9% per annum from the date of application till realisation.

Sd/-
Ag. Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

24-08-2007

Gopal